IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 118 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

BARODA ELECTRIC METERS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 118 of 1987
MR AKIL QURESHI for MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 31/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law has been referred to this court for its opinion by the Income Tax Appellate Tribunal Ahmedabad Bench 'C' under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"Whether the assessee is entitled in law and on the facts of the case to the deduction of Rs. 10,824/- being the interest paid by the assessee for the delay in payment of sales tax?"

2. Learned advocate Shri Akil Qureshi has appeared for the applicant whereas nobody has appeared for the respondent revenue.

3. Learned advocate Shri Qureshi appearing for the revenue has submitted that looking to the law laid down by this Court in the case of Orient Trading Co. v. CIT, 202 ITR 481, the Tribunal was absolutely justified in not allowing deduction of Rs. 10,824/- being the amount of interest paid by the assessee for the delayed payment of sales tax. It has been therefore submitted by him that the question should be decided in the light of the law laid down by this Court in the case of Orient Trading Co. (supra).

4. We have heard the learned advocate, but in our opinion, the law laid down by the Hon'ble Supreme Court in the case of Prakash Cotton Mills P. Ltd. v. CIT, 201 ITR 645 shall have to be looked into before giving final opinion on the question referred to this court. It has been observed by the Supreme Court in the said case that

....."Therefore, whenever any statutory impost paid by an assessee by way of damage or penalty or interest is claimed as an allowable expenditure under section 37(1) of the Income-tax Act, the assessing authority is required to examine the scheme of the provisions of the relevant statute providing for payment of such impost notwithstanding the nomenclature of the impost as given by the statute, to find whether it is compensatory or penal in nature. The authority has to allow deduction under section 37(1) of the Income-tax Act, wherever such examination reveals the concerned impost to be purely compensatory in nature. Wherever such impost is found to be of a composite nature, that is, partly of compensatory

nature and partly of penal nature, the authorities are obliged to to bifurcate the two components of the impost and give deduction to that component which is compensatory in nature and refuse to give deduction to that component which is penal in nature."

5. Looking to the above referred ratio of the judgment delivered by the Supreme Court, in our opinion, the Tribunal will have to examine whether the amount of interest which was paid by the assessee for the delayed payment of sales tax was compensatory or penal in nature. Upon perusal of the orders annexed to this reference, we are unable to know whether nature of interest paid was penal or compensatory.

6. In the circumstances, we decline to answer the question and direct the Tribunal to examine the facts of the case after considering the law laid down by the Supreme Court in the case of Prakash Cotton Mills P. Ltd. (supra).

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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